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8
9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12
13 Plaintiff,
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15 v.
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ADRIAN ALVARADO, ET. AL.
17
18 Defendants.
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CASE NO. 1:20-CR-00019 DAD-BAM

**STIPULATION TO CONTINUE STATUS
CONFERENCE DATE AND ORDER THEREON**

Date: April 27, 2020
Time: 1:00 p.m.
Honorable Barbara A. McAuliffe

18 The United States of America, by and through MCGREGOR W. SCOTT, United States
19 Attorney, and KATHLEEN A. SERVATIUS and KATHERINE E. SCHUH, Assistant United States
20 Attorneys, and the defendants, by and through their respective attorneys of record, hereby stipulate to
21 continue the status conference in this case from April 27, 2020 until June 22, 2020 at 1:00 p.m and for
22 such time between those dates be excluded from the calculation as to the time within which the
23 defendants should be tried.

24 On March 17, 2020, this Court issued General Order 611, which suspends all jury trials in the
25 Eastern District of California scheduled to commence before May 1, 2020. This General Order was
26 entered to address public health concerns related to COVID-19.

27 Although the General Order addresses the district-wide health concern, the Supreme Court has
28 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive

1 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
2 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
3 exclusion under” § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.*
4 at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
5 judge ordering and ends-of-justice continuance must set forth explicit findings on the record “either
6 orally or in writing”).

7 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
8 and inexcusable—the General Order requires specific supplementation. Ends-of-justice continuances
9 are excludable only if “the judge granted such continuance on the basis of his findings that the ends of
10 justice served by taking such action outweigh the best interest of the public and the defendant in a
11 speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets
12 forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice
13 served by the granting of such continuance outweigh the best interests of the public and the defendant in
14 a speedy trial.” *Id.*

15 The General Order excludes delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
16 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
17 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
18 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
19 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
20 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
21 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
22 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
23 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

24 In light of the societal context created by the foregoing, this Court should consider the following
25 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
26 justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date
27 for the [event]. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial
28 continuance must be “specifically limited in time”).

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1. By previous order, this matter was set for status on April 27, 2020.
2. By this stipulation, the parties now move to continue the status conference until June 22, 2020, and to exclude time between April 27, 2020, and June 22, 2020, under Local Code T4.

2. By this stipulation, the parties now move to continue the status conference until June 22, and to exclude time between April 27, 2020, and June 22, 2020, under Local Code T4.

a) The discovery associated with this case includes voluminous investigative reports, wire interceptions recordings and electronic messages, precise location information data, and more, approximately 82,000 pages/files. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying.

c) Counsel for defendants believe that failure to grant the above-requested continuance would deny them the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

e) In addition to the public health concerns cited by General Order 611 and exacerbated by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in this case because counsel or other relevant individuals have been encouraged to telework and to minimize personal contact to the greatest extent possible. It will be difficult to avoid personal contact, but it should the hearing proceed.

g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161 et seq., within which trial must commence, the time period of April 27, 2020 to June 22, 2020, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4]

1 because it results from a continuance granted by the Court at defendant's request on the basis of
2 the Court's finding that the ends of justice served by taking such action outweigh the best interest
3 of the public and the defendant in a speedy trial.

4 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
5 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
6 must commence.

7 IT IS SO STIPULATED.

8 Dated: April 1, 2020

MCGREGOR W. SCOTT
United States Attorney

9
10 /s/ Kathleen A. Servatius
KATHLEEN A. SERVATIUS
Assistant United States Attorney

11
12 DATED: April 1, 2020

/s/ John Kemper Jackson
John Kemper Jackson
Attorney for Adrian Alvarado

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14
15 DATED: April 1, 2020

/s/James Homola
James Homola
Attorney for Defendant Alex Melchor-Guzman

16
17 DATED: April 1, 2020

/s/ Kevin P. Rooney
Kevin P. Rooney
Attorney for Defendant Adrian Lopez

18
19 **ORDER**

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21 IT IS SO ORDERED that the Status Conference is continued from April 27, 2020 to **June 22,**
22 **2020 at 1:00 PM before Magistrate Judge Barbara A. McAuliffe.** Time is excluded pursuant to 18
23 U.S.C. § 3161(h)(7)(A), B(iv).

24 IT IS SO ORDERED.

25 Dated: **April 2, 2020**

26 /s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE